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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/042,799
Filing Date: January 09, 2002
Appellant(s): LEYMANN ET AL.

Scott D. Paul
Registration No. 42,984
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 22, 2006 appealing from the Office action mailed November 16, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The Examiner relied upon Holmberg (U.S. Patent No. 6,247,141), Rizvi et al. (U.S. Patent No. 6,490,610), and Helmer et al. (U.S. Patent No. 6,411,991).

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg, U.S. Patent No. 6,247,141, in view of Rizvi et al., U.S. Patent No. 6,490,610, further in view of Helmer et al., U.S. Patent No. 6,411,991.

Holmberg teaches the invention substantially as claimed including fault tolerant server systems including redundant servers (see abstract).

As to claims 1, 7, and 11, Holmberg teaches a method of operating a computer system, wherein said computer system comprises at least one application client (15), at least two application servers (20, 21) which are suitable to process requests of the application clients (15), and a database (26) which may be accessible by the two application servers (20, 21), and wherein said method comprises the steps of recognizing that the first one of the two application servers (20, 21) fail, sending a request of the application client (15) for the first application server (21) to the second application server (20) while the first one of the two application servers (20, 21) fails to access the database, processing the request by the second application server (20), and sending a response to the request from the second application server (20) to the first application server (21). (col. 3, lines 5-22, Holmberg discloses a primary server and a backup server, client applications with requests, and a backup server running if there is a problem with the primary server without the user knowing about the use of the backup server).

Holmberg fails to teach the limitation further including the failure to access a database and sending a request of the application client (15) for the first application server (21) from the first application server (21) to the second application server (20).

However, Rizvi teaches a method and apparatus for implementing an automatic failover mechanism for clients accessing a resource through a server (see abstract). Rizvi teaches the use of an automatic failover system (col. 3, line 33 – col. 4, line 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holmberg in view of Rizvi to use another server based on a failure to

access a database. One would be motivated to do so because it would eliminate the burden of manually re-logging onto the database system whenever a database session failure occurs (col. 3, lines 37-39).

Holmberg and Rizvi fail to teach the limitation further including sending a request of the application client (15) for the first application server (21) from the first application server (21) to the second application server (20).

However, Helmer teaches a geographic data replication system and method for a network (see abstract). Helmer teaches the use of a failed server routing requests to a remote server for processing (col. 2, lines 2-15, 46-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Holmberg and Rizvi in view of Helmer to send a request of the application client (15) for the first application server (21) from the first application server (21) to the second application server (20). One would be motivated to do so because it would be a faster and more efficient backup for the server to forward the data to the backup server.

Regarding claims 2 and 12, Holmberg teaches the method of claims 1 and 11 comprising the further step of sending the response from the second application server (20) to an input queue (24) of the first application server (21) (col. 6, lines 10-18, 29-40, Holmberg discloses a queue with the backup and primary servers).

Regarding claims 3 and 13, Holmberg teaches the method of claims 2 and 12 comprising the further step of putting, by the first application server (21), the response from the input queue (24) to an output queue (27) of the first application server (21) (col. 6, lines 10-18, 29-40).

Regarding claims 4 and 14, Holmberg teaches the method of claims 1 and 11 comprising the further step of sending the response from the second application server (20) to an output queue (27) of the first application server (21) (col. 6, lines 10-18, 29-40).

Regarding claim 5, Holmberg teaches the method of one of claims 3 or 4 comprising the further step of sending the response from the output queue (27) to the application client (15) (col. 3, lines 5-22, col. 6, lines 10-18, 29-40, Holmberg discloses a reply message sent to the client).

Regarding claim 6, Holmberg teaches the computer program or computer program product which is suitable to perform the method of one of claims 1 to 4 when it is loaded into a computer system (col. 1, lines 30-42, Holmberg discloses use of computer hardware).

Regarding claim 8, Holmberg teaches the computer system of claim 7 further comprising an input queue (24) corresponding to the first application server (21) (col. 6, lines 6, lines 28-40, Holmberg discloses a queue of requests in a primary server).

Regarding claim 9, Holmberg teaches the computer system of claim 7 or 8 further comprising an output queue (27) corresponding to the first application server (21) (col. 6, lines 10-18, 29-40).

Regarding claim 10, Holmberg teaches the computer system of one of claims 7 to 8 wherein the at least two application servers (20, 21) process request forms a number of application clients (14, 15, 16) (col. 3, lines 5-22).

(10) Response to Argument

The Examiner summarizes the various points raised by the Appellant and addresses replies individually.

With regards to the arguments of claim 1 of the appeal brief, the Appellant argues that the Examiner improperly separated a limitation in the claim, that Helmer does not teach the use of a failed server routing requests to a remote server, and that the motivation to combine is improper.

In response, the examiner respectfully disagrees:

The Appellant argues that the Examiner has improperly "separated" the "while the first application fails to access the database" limitation from the limitation of sending a request of the application client for the first application server to the second application server. However, the Appellant provides no argument or proof as to why the examiner's claim construction is improper. Rather, Appellant has argued that Holmberg and Rizvi fail to disclose this feature, which the examiner has previously conceded. This limitation is taught by Helmer.

The Appellant argues Helmer does not teach a failed server routing requests to a remote server and reproduces the column and line numbers, column 2, lines 2-15 and column 2, lines 46-59, from the Examiner's rejection in their appeal brief. The limitation in question is explicitly shown in both sections in column 2 on lines 11-13, "If a server fails, such as the local server, the remote server begins processing user requests based on the temporary data it received from the local server." and lines 53-54, "If the local server fails, the user request is routed to the remote server." As disclosed in these passages, Helmer clearly teaches "a failed server routing requests to a remote server."

The Appellant argues that the motivation to combine is improper and that it does not establish a realistic nexus between the proposed modification and asserted benefit. The Examiner disagrees and believes that there is a realistic nexus. Sending a request for the first application server from the first application server to the second application

server is a faster and more efficient backup for the server than having another server retrieve the request from the first server to then send it to the second server. A faster and more efficient way to send a request from the first server to the second server is to directly send the request, which is the motivation for the combination.

With regards to the arguments of claims 7 and 11 of the appeal brief, the Appellant has the same arguments as for claim 1, which are responded to above, and the Appellant argues the Examiner has not properly directed the rejections of claim 7 and 11 to their specific preambles.

In response, the recitations have not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. The Appellant admits in the appeal brief that the limitations in both claims 7 and 11 are comparable to claim 1.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Avi Gold

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